

CLERK'S OFFICE U.S. DIST. COURT  
AT ABINGDON, VA  
FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Big Stone Gap DIVISION

MAY 07 2018

JULIA C. DUDLEY, CLERK  
BY: [Signature]  
DEPUTY CLERK

Melinda Scott

Plaintiff(s),

v.

Virginia DMAS

Defendant(s).

(Enter the full name(s) of ALL parties in this lawsuit.

Please attach additional sheets if necessary).

Civil Action No.: 2:18CV00012  
(To be assigned by Clerk of District Court)

COMPLAINT

PARTIES

1. List all Plaintiffs. State the full name of the Plaintiff, address and telephone number. Do the same for any additional Plaintiffs.

a. Plaintiff No. 1

Name: Melinda Scott

Address: PO BOX 1133-2014PMB87 Richmond, VA 23218

Telephone Number: [REDACTED]

b. Plaintiff No. 2

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

2. List all Defendants. State the full name of the Defendant, even if that Defendant is a government agency, an organization, a corporation, or an individual. Include the address where each Defendant may be served. Make sure that the Defendant(s) listed below are identical to those contained in the above caption of the complaint.

a. Defendant No. 1

Name: Virginia DMAS (EDCD Division)

Address: 600 E. Broad St., 6<sup>th</sup> Flr., Richmond, VA 23219

b. Defendant No. 2

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**NOTE: IF THERE ARE ADDITIONAL PLAINTIFFS OR DEFENDANTS, PLEASE PROVIDE THEIR NAMES AND ADDRESSES ON A SEPARATE SHEET OF PAPER.**

Check here if additional sheets of paper are attached: ☐

Please label the attached sheets of paper to correspond to the appropriate numbered paragraph above (e.g. Additional Defendants 2.c., 2.d., etc.).

**JURISDICTION**

Federal courts are courts of limited jurisdiction. Generally, two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state and the amount of damages is more than \$75,000 is a diversity of citizenship case. Federal courts also have jurisdiction over cases where the United States is a Defendant.

3. What is the basis for federal court jurisdiction?

☐ Federal Question

☐ Diversity of Citizenship

☒ Government Defendant

4. If the basis for jurisdiction is Federal Question, which Federal Constitution, statutory or treaty right is at issue? List all that apply.

First Amendment

5. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party? Each Plaintiff must be diverse from each Defendant for diversity jurisdiction. n/a

Plaintiff No. 1: \_\_\_\_\_ State of Citizenship: \_\_\_\_\_

Plaintiff No. 2: \_\_\_\_\_ State of Citizenship: \_\_\_\_\_

Defendant No. 1: \_\_\_\_\_ State of Citizenship: \_\_\_\_\_

Defendant No. 2: \_\_\_\_\_ State of Citizenship: \_\_\_\_\_

Attach additional sheets of paper as necessary and label this information as paragraph 5. Check here if additional sheets of paper are attached. ☐

#### STATEMENT OF THE CLAIM

Describe in the space provided below the basic facts of your claim. The description of facts should include a specific explanation of how, where, and when each of the defendants named in the caption violated the law, and how you were harmed. Do not give any legal arguments or cite cases or statutes. Each paragraph must be numbered separately, beginning with number 6. Please write each single set of circumstances in a separately numbered paragraph.

6.(a) In April 2016 my son [REDACTED] was found eligible to participate in the VA DMAS EDCD waiver program. The Elderly & Disabled Consumer Directed (EDCD) waiver allows recipients the option to hire Attendants to assist with in the home care.

(b) In February 2018 I attempted to enroll my legal spouse (husband) as an Attendant within the EDCD Waiver program to assist with the care of my son [REDACTED]. Enrollment is

done electronically. When the Service Facilitator assigned to my case received a notification that I was trying to enroll my legal spouse she sent me a text message stating that step-parents could not be paid for Attendant Services under VA DMAS policy (administrative code). The manual section she cited was VA DMAS EDCD Manual Chapter II, pg. 19.

- (c) The managing company PPL enrolled my legal spouse effective March 5, 2018.
- (d) When I looked up Chapter II, pg. 19 it read that a "parent" could not be paid for services. "Parent" was defined in parentheses as "biological, step-parent, adoptive or legal guardian." The subsequent sentences of the same paragraph said/say that if an adequate attendant could not be found, the consumer could write a request to VA DMAS requesting an exception.
- (e) On February 16, 2018 I wrote a letter

(continued from previous page/attachment to question 6)

to Virginia DMAS requesting an exception to their Attendant policies, stating the reasons for needing the exception. I was notified by telephone that my request was denied because my legal spouse could not be paid under the program. I was then contacted a few days later by a different person from the same department via e-mail. I restated in e-mail the reasons for my request and again was told that my legal spouse could not be paid. The decision by VA DMAS was not reversed as a result of the e-mails. In my letter and e-mail correspondence I also stated the federal law (First Amendment) basis for my request. I have attached a copy of the letter to this pleading to demonstrate the constitutional basis for my request. I have blacked out confidential medical record numbers, names and sensitive information regarding my son's health care.

(f) I assert that the policy of VA DMAS EDCD program (Administrative Code) violates the First Amendment because it discriminates against the religious practices of my family. The First Amendment states that "congress shall make no law respecting the establishment of religion or the free exercise thereof". Virginia Law (Virginia congress) has given DMAS the power to create policy (administrative code) that is equal to law. However, the legislative power that Virginia has given DMAS has in turn violated the First Amendment through their EDCD policies. The EDCD policies make it impossible for those with certain religious beliefs to equally receive adequate services. Their policies attempt to restrict the free exercise of one's religion at the expense of not receiving the tax payer benefits they are entitled to. Their policies coerce compliance with their standards at the expense of my religious beliefs. Or in other words, that I can either abandon my religious beliefs in order to comply with their policies or forfeit my tax payer benefits.

(g) As a member of a religion who has beliefs and rules about the choice of caretakers for my children I am being covertly denied my First Amendment right. The EDCD policy restricts who may be the caretaker under the program. By making this policy they have discriminated against my religion. In a covert manner, the EDCD waiver policy establishes other religious standards as the standard for Virginia families. My family cannot use the EDCD waiver in a manner that allows us to benefit from the program equally. In order for my family to use the EDCD waiver we would have to compromise our religious beliefs (be restricted in the free exercise of our religious beliefs). The EDCD waiver covertly restricts the free exercise of religion.

Melinda Scott  
[REDACTED]

February 16, 2018

Virginia DMAS  
EDCD Division  
600 East Broad St., 6<sup>th</sup> floor  
Richmond, Virginia 23219  
*Sent via email to CDFAS@dmass.virginia.gov*

RE: EDCD Exception Request  
PPL ID [REDACTED]  
Medicaid ID: [REDACTED]  
[REDACTED] (EDCD enrollee)

To whom it may concern:

This letter is a request, pursuant to DMAS "Elderly or Disabled with Consumer Direction Waiver Services Provider Manual" Chapter II, Page 19, to request an attendant enrollment exception for a family member. My son is enrolled in the Virginia EDCD Waiver program and currently has one attendant. It is also necessary to enroll another attendant. Specifically, I want to enroll my spouse ([REDACTED] step parent).

Although the Medicaid manual says a step parent cannot be attendant, it also says that I can submit written, objective documentation demonstrating why no other attendant can meet the need for the EDCD eligible enrollee (Chapter II, page 19). Below are my objective reasons for needing the step-parent ([REDACTED]) to also be [REDACTED] attendant:

1. Our religious values/beliefs dictate that only a male relative can help my son with bathing assistance that requires physical touch assistance when [REDACTED] needs help in the shower or bathtub. In our religion strangers and those of the opposite gender are not supposed to see or touch others naked. To date, I have only had females apply for the job and they have not been able to assist with some of the bathing tasks I need assistance for. Having the male step-parent available to do these tasks would be of great benefit for [REDACTED] and is within the boundaries of our religious values/beliefs.
2. As [REDACTED] mother I have sole legal custody of him and am the person responsible for supervising [REDACTED] at home during the day. It is against my religious beliefs for another male who is not my husband, dad or brother to be in the house alone with me (to assist with [REDACTED]).
3. Our religious beliefs dictate that the parent(s) should be the first primary caretaker(s) of our children. I need [REDACTED] step-parent to meet his attendant and respite hour needs.

4. My religious beliefs are protected by the First Amendment of the US Constitution (Federal Law) and it is unlawful for Virginia Medicaid to restrict who should be the caretaker for my son when I have a religious belief that dictates the step-parent should and can meet the need. US Constitutional Federal Law cannot be changed or undermined by State laws.
5. The times that [REDACTED] has [REDACTED] (which are part of his condition) are spontaneous/unpredictable. It is difficult to get an attendant who does not reside in the home to help with these issues which are unpredictable. A step-parent who is available at odd hours, late at night, and other times is able to help with these tasks and that better helps [REDACTED] needs be met.

For the above stated reasons I am requesting that [REDACTED] step-parent be one of his attendants. Thank you for your time in this matter. I can be contacted at the above address, by telephone at [REDACTED] or at [REDACTED].

Thank you,

*Melinda Scott* (electronic signature)

CC: [REDACTED] Service facilitator  
Via email at [REDACTED]

PPL via email at pplva@pcgus.com

Attach additional sheets of paper as necessary and label them as Additional Facts and continue to number the paragraphs consecutively. Check here if additional sheets of paper are attached. ☒

#### REQUEST FOR RELIEF

State what you want the Court to do for you and the amount of monetary compensation, if any, you are seeking.

I am requesting that the court grant injunctive relief to order the Virginia Department of Medical Assistance Services (DMAS) to permit my legal spouse to be paid as an Attendant under the EDCD waiver program that my household participates in. I further request that payments be eligible to be dispersed effective my spouse's enrollment date of March 5, 2018. Or, stated another way, that timesheets for my spouse be able to be processed for payment from March 5, 2018 forward.



DEMAND FOR JURY TRIAL:

☐ YES☒ NOSigned this 26 day of April, 2018.

Signature of Plaintiff No. 1



Signature of Plaintiff No. 2

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**NOTE: All Plaintiffs named in the caption of the complaint must date and sign the complaint.  
Attach additional sheets of paper as necessary.**